

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 202002855	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/18/2020 10:30 PM, Saturday, 04/18/2020 10:30 PM	Location of Incident: 85 Tompkins Avenue; 79th Precinct stationhouse	Precinct: 79	18 Mo. SOL 10/18/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 04/24/2020 10:12 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 04/24/2020 10:12 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Henry Daverin	00000	945645	079 PCT
2. POM Antonio Zorrilla	10893	961480	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mohamed Elhanafi	15082	955897	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Henry Daverin	Force: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin used physical force against § 87(2)(g)	
B.LT Henry Daverin	Discourtesy: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin spoke discourteously to § 87(2)(g)	
C.LT Henry Daverin	Discourtesy: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin spoke discourteously to § 87(2)(g)	
D.LT Henry Daverin	Force: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin used physical force against § 87(2)(g)	
E.LT Henry Daverin	Abuse: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin threatened § 87(2)(g) with the use of force.	
F.LT Henry Daverin	Discourtesy: At the 79th Precinct stationhouse, Lieutenant Henry Daverin spoke discourteously to § 87(2)(g)	
G.POM Antonio Zorrilla	Abuse: At the 79th Precinct stationhouse, Police Officer Antonio Zorrilla strip-searched § 87(2)(g)	

Case Summary

On April 24, 2020, § 87(2)(g) filed this complaint via the CCRB's website.

On April 18, 2020, at approximately 10:30 p.m., Lieutenant Henry Daverin of the 79th Precinct attempted to stop § 87(2)(g) at the intersection of Tompkins Avenue and Myrtle Avenue in Brooklyn after allegedly observing § 87(2)(g) jaywalking. § 87(2)(g) fled northbound up Tompkins Avenue on foot before Lieutenant Daverin caught up with him and tackled him to the ground (**Allegation A – Force**, § 87(2)(g)). Lieutenant Daverin spoke discourteously toward § 87(2)(g) (**Allegation B – Discourtesy**, § 87(2)(g)). Lieutenant Daverin's partners, Police Officers Mohamed Elhanafi and Antonio Zorrilla, also from the 79th Precinct, drove up and assisted with the arrest. Lieutenant Daverin attempted to place § 87(2)(g) in a police vehicle, but § 87(2)(g) resisted. Lieutenant Daverin spoke discourteously toward § 87(2)(g) (**Allegation C – Discourtesy**, § 87(2)(g)). Under the direction of Lieutenant Daverin, Lieutenant Daverin and PO Zorrilla used physical force against § 87(2)(g) in order to place him in a police vehicle (**Allegations D – Force**, § 87(2)(g)). Lieutenant Daverin threatened to use a Taser against § 87(2)(g) (**Allegation E – Abuse of Authority**, § 87(2)(g)). § 87(2)(g) was transported to the 79th Precinct stationhouse, where Lieutenant Daverin spoke discourteously toward § 87(2)(g) (**Allegation F – Discourtesy**, § 87(2)(g)). PO Zorrilla strip-searched § 87(2)(g) (**Allegation G – Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g) was arrested as a result of this incident. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The investigation obtained body-worn camera footage from NYPD Legal. The footage is in IAs #80-82 and #100-101 (**Board Review 1-5**), and summarized in IAs #94-96 and #107-108 (**Board Review 06-10**). TARU video was received but it did not meaningfully capture the incident. The TARU footage is located in IAs #223-224 and summarized in IA#72 (**Board Review 23-25**).

Findings and Recommendations

Allegation (A) Force: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin used physical force against § 87(2)(g)

Allegation (B) Discourtesy: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin spoke discourteously to § 87(2)(g)

§ 87(2)(g) testified that he was walking by himself to a nearby deli (**Board Review 11**) and on the phone with three of his friends, § 87(2)(g), § 87(2)(g), and § 87(2)(g) when right before he stepped into a crosswalk, an unmarked vehicle stopped in front of him. Lieutenant Daverin and PO Elhanafi, identified via investigation and dressed in street clothes, exited the vehicle and said, "Come over here." § 87(2)(g) not realizing they were officers and fearing he was about to be kidnapped, ran away. § 87(2)(g) fear that he was being kidnapped also manifests itself later in the incident, addressed in more detail below in Allegations C-E). § 87(2)(g) said Lieutenant Daverin tackled him to the ground as he was still running, though he could not describe this aspect of the incident in any further detail. Once § 87(2)(g) was on the ground, he did not make any movements or resist as the officers handcuffed him. As a result of the fall, § 87(2)(g) sustained lacerations on his hands, left knee, and right forearm.

§ 87(2)(g) friends, § 87(2)(g), § 87(2)(g), and § 87(2)(g) provided statements that were largely consistent with § 87(2)(g) (**Board Review 12-14**). They all said he was going to the store to buy food when they heard him over the phone yell for help. It sounded as if he was running and out of breath. After a few minutes, it became clear that § 87(2)(g) was under

arrest, as he could be heard asking what he was under arrest for and voices ordered him to produce his ID.

The start of Lieutenant Daverin's BWC video shows him seated in the front passenger seat of the police vehicle as the officers approach an intersection through a steady green traffic signal (**Board Review 04**). At the 00:40 minute mark (based on the media player timestamp on the bottom of the screen), Lieutenant Daverin opens the door and steps out of the vehicle. § 87(2)(g) is standing in the crosswalk of the intersection. The pedestrian crosswalk signal is visible on the left side of the screen as a red upraised hand. § 87(2)(g) turns away from Lieutenant Daverin. At 00:44, § 87(2)(g) runs away. At 00:57, § 87(2)(g) trips and falls to the ground on the sidewalk, tumbles forward, and begins to stand up. At 01:00, Lieutenant Daverin catches up with § 87(2)(g) and brings him to the ground, however due to the closeness of the BWC to § 87(2)(g) body, the video does not capture Lieutenant Daverin's physical movements to get § 87(2)(g) to the ground. Lieutenant Daverin says, "What the fuck are you doing?" At 01:11, Lieutenant Daverin says, "Put your fucking hands behind your back," as he and other officers attempt to place § 87(2)(g) in handcuffs.

Lieutenant Daverin testified that he and his partners drove west down Myrtle Avenue toward the intersection of Myrtle Avenue and Tompkins Avenue (**Board Review 15**). Lieutenant Daverin was the Anti-Crime supervisor, and they were patrolling the area which is a gun prone location. As they approached that intersection, they had a green light to proceed down Myrtle Avenue. From the front passenger seat, Lieutenant Daverin observed § 87(2)(g) walking southbound on Tompkins Avenue, approaching Myrtle Avenue. § 87(2)(g) entered the roadway against the traffic signal. Lieutenant Daverin told his partners to stop the vehicle because he intended to stop § 87(2)(g) for illegally entering the roadway. Lieutenant Daverin exited his vehicle, identified himself by saying "Police Department," and approached § 87(2)(g) who fled on foot north up Tompkins Avenue. When he caught up with § 87(2)(g) Lieutenant Daverin wrapped his arms around § 87(2)(g) torso and tackled him to the ground. § 87(2)(g) physically resisted being placed in handcuffs by pulling his hands underneath him. Lieutenant Daverin said, "What the fuck are you doing," because he became excited and wondered why § 87(2)(g) ran away even though he was being stopped for a simple violation. Lieutenant Daverin told § 87(2)(g) "Put your fucking hands behind your back" to gain his compliance.

The primary duty of all members of the service is to protect human life, including the lives of individuals being placed in police custody. Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Various factors determine the reasonableness of an application of force including a) the nature and severity of the crime/circumstances, b) actions taken by the subject, c) duration of the action, d) immediacy of the perceived threat of harm to the subject or others, e) whether the subject is actively resisting custody, f) whether the subject is attempting to evade arrest by flight, g) number of subjects in comparison to the number of officers, h) size, age, and condition of the subject in comparison to the MOS, i) subject's violent history, if known, j) presence of hostile crowd or agitators, k) subject under the influence of stimulant/narcotic. NYPD Patrol Guide, Procedure 221-01 (**Board Review 16**).

Officers must value human life, respect the dignity of each individual, and render services with courtesy and civility. NYPD Patrol Guide, Procedure 200-02 (**Board Review 17**). When an officer makes profane remarks during a stressful street encounter where the officer is attempting to maintain control of the situation, the officer's remarks will not rise to the level of actionable misconduct. DCT Case #2018-18950 (**Board Review 18**).

Allegation (D) Force: In front of 85 Tompkins Avenue in Brooklyn, Lieutenant Henry Daverin used physical force against § 87(2)(g)

§ 87(2)(g) testified that after he was stood up, Lieutenant Daverin pushed § 87(2)(g) upper body into the police car. PO Zorrilla, who had entered the car from the other side, pulled § 87(2)(g) by his upper body into the backseat. Still believing he was being kidnapped, § 87(2)(g) kept his foot in the doorway to resist. Once the officers had him inside the vehicle, § 87(2)(g) stopped resisting.

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the police department. Get your goddamn foot in the car.”

Lieutenant Daverin and PO Zorrilla were consistent in describing that § 87(2)(g) refused to enter the police car after being ordered to do so (**Board Review 15, 20**). § 87(2)(g) also physically resisted by stiffening his body as the officers brought him to the car. Lieutenant Daverin pushed § 87(2)(g) by the top part of his body, inside the car while PO Zorrilla entered the backseat and pulled him inside. Once inside, § 87(2)(g) continued resisting by keeping his feet in the doorway and kicking the door, which prevented Lieutenant Daverin from being able to shut the door.

Lieutenant Daverin testified that he used profanity during this aspect of the encounter in order to gain § 87(2)(g) compliance. Similarly, he threatened to use a Taser against § 87(2)(g) due to § 87(2)(g) active resistance and in an attempt to gain his compliance. Lieutenant Daverin never unholstered his Taser but believed he may have been justified in using it if § 87(2)(g) had continued to resist. However, deploying the Taser did not cross Lieutenant Daverin’s mind during the incident.

Officers must value human life, respect the dignity of each individual, and render services with courtesy and civility. NYPD Patrol Guide, Procedure 200-02 (**Board Review 17**). When an officer makes profane remarks during a stressful street encounter where the officer is attempting to maintain control of the situation, the officer’s remarks will not rise to the level of actionable misconduct. DCT Case #2018-18950 (**Board Review 18**). A conducted electrical weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Active resistance includes physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing or verbally signally an intention to avoid or prevent being taken into or retained in custody. A CEW should never be used in cartridge or drive stun mode on a rear-handcuffed prisoner. NYPD Patrol Guide, Procedure 221-08 (**Board Review 22**).

Given § 87(2)(g) physical resistance as officers attempted to place him in the police car, which § 87(2)(g) acknowledged and which is captured in the BWC video, the officers’ use of force, specifically pushing and pulling him inside the car in order to transport him to the stationhouse, § 87(2)(g). Given that the BWC footage shows Lieutenant Daverin directing PO Zorrilla to pull § 87(2)(g) into the police car, this allegation is pled solely against Lieutenant Daverin.] Similarly, given § 87(2)(g) refusal to comply with verbal commands and his physical resistance to being placed inside the car, § 87(2)(g).

§ 87(2)(g) Given that § 87(2)(g) was rear-handcuffed when the officers struggled to place him inside the police car, § 87(2)(g).

Allegation (F) Discourtesy: At the 79th Precinct stationhouse, Lieutenant Henry Daverin spoke discourteously to § 87(2)(g)

§ 87(2)(g) testified that he was driven to the stationhouse without incident. Once there, medical personnel arrived and administered treatment for various lacerations that he sustained when he was tackled to the ground. § 87(2)(g) did not allege that any officer used profanity toward him at the stationhouse.

In PO Elhanafi's BWC video, at the 03:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Zorrilla (walking in front of PO Elhanafi) walks § 87(2)(g) inside the stationhouse (**Board Review 02**). At 03:12, § 87(2)(g) says, "I can explain everything." Lieutenant Daverin (standing in the doorway) says, "You can't explain shit." § 87(2)(g) is brought in front of the desk. At 04:50, PO Elhanafi places his BWC on the desk to face himself and § 87(2)(g) while he asks § 87(2)(g) for his contact information and completes paperwork. At 05:24, § 87(2)(g) says, "Excuse me, if I'm under arrest, I'm entitled to the charges." At 05:33, § 87(2)(g) says, "I'm really sorry." Lieutenant Daverin, who is behind the desk and not visible in the video says, "Stop. I don't want to hear you talk with your fucking bullshit about that you watched a video about abductions. You were screaming and yelling shit. Just stop. I have no interest in hearing what you have to say."

Lieutenant Daverin testified that he did not know why he told § 87(2)(g) "You can't explain shit," as they were entering the stationhouse. He said he used profanity inside the stationhouse because he did not want to hear § 87(2)(g) continue to talk about being kidnapped.

Officers must value human life, respect the dignity of each individual, and render services with courtesy and civility. NYPD Patrol Guide, Procedure 200-02 (**Board Review 17**). When an officer makes profane remarks during a stressful street encounter where the officer is attempting to maintain control of the situation, the officer's remarks will not rise to the level of actionable misconduct. DCT Case #2018-18950 (Board Review 18).

While § 87(2)(g) had previously fled from the police and physically resisted their efforts to place him into custody and inside their police car, once at the stationhouse, § 87(2)(g) was compliant and cooperated with PO Zorrilla's and PO Elhanafi's efforts to process him. Under these circumstances, the Patrol Guide requires officers to engage civilians with courtesy and civility.

§ 87(2)(g)
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Allegation (G) Abuse of Authority: At the 79th Precinct stationhouse, Police Officer Antonio Zorrilla strip-searched § 87(2)(g)

§ 87(2)(g) testified that he did not remember if any officers pulled his pants down or to the side when he was at the stationhouse.

In PO Zorrilla's BWC video, at the 12:20 minute mark of the media player timestamp (visible at the bottom of the screen), PO Zorrilla is visible inside a holding cell with § 87(2)(g) (**Board Review 05**). PO Zorrilla orders § 87(2)(g) to stand up and turn around. PO Zorrilla pats down § 87(2)(g) legs. At 12:35, PO Zorrilla lifts the bottom of § 87(2)(g) shirt, which exposes § 87(2)(g) boxers, which are at waist level but higher than his pants. PO Zorrilla pulls the waist band of the pants downward, further exposing § 87(2)(g) boxers, and touches the boxers momentarily.

PO Zorrilla testified that he patted down § 87(2)(g) and searched his pockets by the front desk, then brought him to a holding cell and placed him inside. PO Zorrilla pulled the top of § 87(2)(g) pants to the side to see if § 87(2)(g) had a second pair of pants on underneath. PO Zorrilla usually checks to see if a prisoner has two pairs of pants on because this is frequently the case and prisoners can hide contraband in the second pair. PO Zorrilla touched § 87(2)(g) boxers to see if there was another layer of clothing underneath. The purpose of PO Zorrilla's search was to determine whether he was concealing any contraband on his person. PO Zorrilla was not directed to conduct this search and

conducted it because it was a routine part of arrest processing.

Lieutenant Daverin testified that he did not authorize a strip search of § 87(2)(g) and that if he had, it would have been documented in the Command Log. The Command Log did not contain any notation documenting that § 87(2)(g) was strip-searched (**Board Review 26**).

A strip search is any search in which an individual's undergarments and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas. Strip searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. NYPD Patrol Guide, Procedure 208-05 (**Board Review 21**).

Given that PO Zorrilla pulled down § 87(2)(g) pants and exposed his undergarments while searching him, § 87(2)(g) PO Zorrilla conducted this strip search without any specific reason to believe § 87(2)(g) was concealing weapons, contraband, or evidence on his person, and without the authorization of a supervisor, which was required by the Patrol Guide. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(g) has been a party (**Board Review 27**).
- Lieutenant Daverin has been a member of the service for 13 years, and has been a subject in 35 cases involving 129 allegations, eight of which were substantiated.
 - In case #201502623, the Board substantiated frisk, vehicle search, and refusal to provide name/shield number allegations against Lieutenant Daverin. The Board recommended Command Discipline A, which the NYPD imposed.
 - In case #201604699, the Board substantiated an entry and search allegation against Lieutenant Daverin. The Board recommended Command Discipline B and the NYPD imposed no discipline.
 - In case # 201911006, the Board substantiated frisk, stop, and discourtesy allegations against Lieutenant Daverin. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
- PO Zorrilla has been a member of the service for five years and has been a subject in 11 cases involving 33 allegations, one of which was substantiated. PO Zorrilla's CCRB history does not reflect any apparent pattern pertinent to this investigation.
 - In case #201907037, the Board substantiated a discourtesy allegation against PO Zorrilla. The Board recommended Command Discipline A, which the NYPD imposed.

Mediation, Civil and Criminal Histories

- § 87(2)(g) declined to mediate this complaint.
- As of December 2, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 29**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: Rolando Vasquez SI Rolando Vasquez 3/15/2022
Signature Print Title & Name Date

Squad Leader: Laura Kastner IM Laura Kastner 03/15/2022
Signature Print Title & Name Date